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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

LINDA DIANE MCDANIEL,

Defendant and Appellant.

C059986

(Super. Ct. No. CM029402)

A search warrant was executed on defendant Linda Diane McDaniel's trailer in Paradise, California. The search revealed over 11 grams of methamphetamine, scales, and a pay/owe sheet. When questioned by law enforcement, defendant admitted to selling methamphetamine.

Defendant entered a negotiated plea of no contest to possessing methamphetamine for sale (Health & Saf. Code, § 11378) and admitted a prior "strike" conviction within the meaning of the Three Strikes law. In exchange for her plea, the People agreed to dismiss a prior prison term enhancement allegation (Pen. Code, § 667.5, subd. (b)), and the parties agreed to a stipulated sentence of four years in state prison (the middle term of two years, doubled to four years under the Three Strikes law). The trial court imposed the stipulated sentence and ordered defendant to pay a \$200 restitution fine, another \$200 restitution fine that was

suspended unless parole is revoked, a court security fee of \$20, and a criminal laboratory analysis fee in the amount of \$180 (to be broken down as provided in the probation report).¹ The trial court also found defendant to have no ability to pay the drug program fee, recommended that she attend drug and alcohol counseling while incarcerated, ordered her to register as a controlled substance offender and to provide blood and saliva samples, thumbprints, and a full palm print, and awarded a total of 126 days of presentence custody credit.

Defendant appeals. She did not obtain a certificate of probable cause.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

We find one error in the judgment. Under the terms of the plea agreement, the prior prison term enhancement allegation was to be dismissed. However, the People never moved to dismiss such

¹ The probation report provides the following breakdown: \$50 criminal laboratory analysis fee (Health & Saf. Code, § 11372.5, subd. (a)), \$10 court surcharge (Pen. Code, § 1465.7, subd. (a)), \$25 state court facilities construction fund (Gov. Code, § 70372), \$50 state penalty assessment (Pen. Code, § 1464), \$35 county penalty assessment (Gov. Code, § 76000), \$5 DNA identification fund fee (Gov. Code, § 76104.6), and \$5 DNA identification fund fee (Gov. Code, § 76104.7). We find this to be an accurate breakdown of the fees and assessments.

allegation. While the court sentenced defendant in accordance with the plea agreement, as if the allegation had been dismissed, the court never actually dismissed the allegation. We hereby dismiss the prior prison term enhancement allegation.²

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified by dismissing the prior prison term enhancement allegation. As modified, the judgment is affirmed.

_____, SIMS _____, Acting P. J.

We concur:

_____, NICHOLSON _____, J.

_____, CANTIL-SAKAUYE _____, J.

² In the interest of judicial economy, we have addressed this error without first requesting supplemental briefing. Any party claiming to be aggrieved may petition for rehearing. (Gov. Code, § 68081.)